

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MATTHEW J. LIKENS

Plaintiff,

v.

CSX TRANSPORTATION, INC.

Defendant.

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Case No._____

COMPLAINT AND REQUEST FOR JURY TRIAL

Plaintiff Matthew J. Likens, by and through counsel, Carolyn M. Latti, Esq., Latti & Anderson, LLP, P. Matthew Darby, Esq., Catherine Woolley, Esq., and Berman, Sobin, Gross, Feldman & Darby, LLP, sues Defendant CSX Transportation, Inc., and as causes of action states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Matthew J. Likens is a citizen of New Hampshire.
2. Defendant CSX Transportation, Inc., (“CSX”), is a railroad corporation organized and existing under and by virtue of the Laws of the State of Florida and is doing business within the jurisdiction of this Court as an interstate common carrier for hire and has an office in Hyde Park, Massachusetts.
3. Plaintiff’s cause of action arises under the appropriate provisions of the Federal Employers’ Liability Act, 45 U.S.C. § 51 *et seq.*
4. At all times herein mentioned, Plaintiff and Defendant were engaged in interstate Commerce and all trackage, cars, equipment and premises involved were under the control of Defendant.

5. On or about July 21, 2021, the Plaintiff, while in the employ of the Defendant as a conductor, sustained severe injuries.

6. On that date, the Plaintiff was assigned as a Conductor on crew Y73372D and reported for duty at 11:00 p.m. at Worcester Yard, in Worcester, Massachusetts. The Plaintiff performed his usual switching operations during the course of that night. At approximately 6:00 a.m. on July 21st, the Plaintiff was instructed by Trainmaster John Shaw that there was a train that needed to be taken to the nearby P&S Railroad Yard also in Worcester, Massachusetts. The Plaintiff was further instructed by the CSX NB Dispatcher and Yardmaster Dan Brady to take a train located on the CSX mainline and deliver it to the P&W Railroad Yard and to leave the train in the clear on the South Norwich # 8 Track in P&W Railroad Yard. In order to do this move, the Plaintiff would have to pull the train into the CSX yard and then shove it into the P&W Yard. The day that this occurred was a Saturday, and on the weekend the P&W Yard is not open, so the CSX NB Dispatcher controls the P&W Yard. The Plaintiff observed that the train was pulling approximately 70 cars, and at the end of the 70 cars were intermodal cars carrying shipping containers. The day before this, the Plaintiff had handled the same train, which did not include any intermodal cars at the time. Because the Plaintiff was not expecting the intermodal cars, he asked Yardmaster Dan Brady if those intermodal cars were also supposed to go to the P&W Yard and expressed his concern as to whether the intermodal cars would clear the Cambridge Street Bridge leading into the P&W Yard. Trainmaster Brady confirmed that they were supposed to go into the yard and that the cars would clear the Bridge. In addition to speaking with Yardmaster Brady, the Plaintiff also questioned the CSX NB Dispatcher about whether the intermodal cars would clear the Cambridge Street Bridge. He was told by the Dispatcher that they would clear. Plaintiff then went back to the train and boarded the rear of

the train and commenced the shoving movement into the P&W Yard. The train traveled approximately 1.5 miles and then the first intermodal car on which the Plaintiff was riding struck the Cambridge Street Bridge. The Plaintiff was thrown off the rear of the car, the train derailed off Track #8 and struck cars on the #6 track and the #10 track, and approximately 15 cars derailed. At the time, the Plaintiff had no direct knowledge of the Cambridge Street Bridge's height restrictions, which is why he specifically asked the CSX NB Dispatcher and Trainmasters Shaw and Brady about the issue. After the accident occurred, the Plaintiff was not immediately aware of why the derailment had occurred. After being thrown from the train, the Plaintiff contacted his Engineer, George Collins, and told him that the train had derailed and that he injured his right shoulder, right knee, and hip and that he was in the need of medical attention, and that they might have hit the bridge.

7. Defendant CSX owed to the Plaintiff a non-delegable duty to provide a reasonably safe place in which to perform his work.

8. Defendant CSX breached its duty to provide the Plaintiff with a reasonably safe place to work in that:

- a. It failed to use due care to furnish the Plaintiff with a reasonably safe place in which to work;
- b. It failed to warn the Plaintiff of the dangers presented by attempting to move the train under a bridge when the intermodal cars on the train were too high to clear the bridge;
- c. It failed to exercise reasonable care for the safety of its employees when it failed to address the concerns of the Plaintiff when advising him on several occasions that the intermodal cars were good to clear the bridge;

d. It was otherwise careless, reckless, and negligent.

9. As a direct and proximate result of the negligence of Defendant CSX, the Plaintiff was seriously, painfully, and permanently injured about the body and limbs, resulting in injuries to his right shoulder, right knee, and hip, which caused and will continue to cause pain, suffering, medical and other related expenses, loss of income and wage-earning capacity, all past, present, and future.

WHEREFORE, The Plaintiff, Matthew J. Likens, demands judgment against the Defendant, CSX Transportation, Inc., in an amount to be determined by the Jury, together with interest and costs.

MATTHEW LIKENS
By his Attorney,

/s/ Carolyn M. Latti
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REQUEST FOR JURY TRIAL

Plaintiff Matthew J. Likens, by and through the undersigned counsel, requests a jury trial on issues presented herein.

/s/ Carolyn M. Latti
Carolyn M. Latti, Esq.